

Committee on Resources

Subcommittee on Energy & Mineral Resources

Statement

Testimony of
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before the House Resources Committee
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
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Members of the committee. Thank you for the opportunity for Mineral Policy Center to appear today to share our views on H.R. 2753, the Abandoned Mine Restoration Act of 1999. Mineral Policy Center would like to take this opportunity to applaud Representative Gibbon's initiative in trying to tackle one of the most pervasive pollution problems in the Western United States --- water pollution from abandoned mines. We would be pleased to join with Representative Gibbons in his effort to improve water quality from abandoned mines. There is much in the bill that we support. We also offer some recommendations to improve the bill.

The Western Governors Association has identified waters associated with abandoned mines as one of the major sources of pollution that remain uncorrected in the western U.S. Literally thousands of streams from the mining districts of South Dakota to California remain polluted because of these significant environmental problems.

Some states have taken action to try to clean up their abandoned mines. Montana in particular deserves attention for the initiative it has shown in tackling major sources of water pollution from abandoned sites. In fact, the Montana Department of Environmental Quality Abandoned Mine Reclamation Bureau's three-stage approach could serve as a model for action. In the first stage, the state hired contractors to identify all the abandoned sites, and to conduct site visits at many locations to determine the extent to which they were polluting waters. The sites were then ranked based upon their water quality impact. In the second stage, the state undertook a significant campaign to identify the owners of high impact sites. Owners included the federal land management agencies, major corporations, and individuals. In the third stage, Montana is now investing available resources to tackle clean-up of the abandoned sites with pollution problems.

These basic steps towards solving the problems of abandoned sites should be the framework for any cleanup effort --- whether undertaken by a state, by the U.S. Army Corps of Engineers, or by a land management agency. We believe a comprehensive approach is required to succeed at abandoned mine land reclamation,

an approach which includes the following steps:

- (1) inventory and prioritize the sites;
- (2) attempt to identify the parties responsible for the sites;
- (3) identify and deploy resources to reclaim the sites.

HR 2753 would expand the authority given to the U.S. Army Corps of Engineers (hereafter, "the Corps") under section 560 of the Water Resources Development Act of 1999 (WRDA) to begin to work with landowners to address water pollution problems associated with abandoned mines. The Corps is a new player in the campaign to reclaim polluting abandoned mines. However, the Corps has substantial technical expertise in water-related management --- expertise which could be applied to abandoned mine reclamation. From Mineral Policy Center's viewpoint, the problem is so pervasive and acute, our western waters need all the help they can get. We welcome the Corps' interest and participation.

Section 3(c) of HR 2753 would authorize the Corps to provide "technical, planning, restoration, remediation and construction assistance to Federal and non-Federal entities..." The Corps has a demonstrated track record in managing clean-up projects, primarily through contract work undertaken to clean up hazardous and radioactive sites. The Corps also has expertise in designing and constructing dams, structures, and other features that might be included in a water pollution clean-up program. This expertise is welcome indeed. However, in applying the Corps' expertise to reclamation, the resources and expertise of other agencies should also be taken into account.

To the extent that the Corps will participate in abandoned mine clean up on federally managed lands, Mineral Policy Center recommends that the bill clearly define the relationship with the pertinent federal land management agency. We believe that the Corps should not begin a project on federally managed lands unless it is expressly authorized by that land management agency. The land management agency also should be the principal party in establishing priorities for reclamation on federally managed lands.

Section 3(f) would create a grants program for cleanup projects, which the Corps would administer. The Corps has no track record for creating or implementing a grants program of which Mineral Policy Center is aware. We urge the Committee to reconsider whether Congress wants to create a new administrative burden for the Corps. This issue might benefit from a dialogue amongst concerned stakeholders.

Section 3(k) would eliminate any liability for the Corps undertaking "a remedial action consistent with a State or Environmental Protection Agency approved remediation plan..." However, the bill does not provide guidelines for the creation of a remediation plan. It appears the bill would allow the Corps to operate as a "good samaritan" in reclaiming abandoned sites. In other words, if the Corps or its designees take steps to address abandoned mine water quality problems, they cannot be held accountable for any degradation of site water quality.

Mineral Policy Center and other organizations have engaged in lengthy discussions with the Western Governors Association in an attempt to develop a legislative strategy that would provide a mechanism for states to clean up abandoned mine water quality problems without assuming liability for the pollution at the mine site. A product of that dialogue was legislation introduced in the U.S. Senate last year, S1787. It would create a detailed regulatory mechanism for these kinds of activities. We encourage the Committee to review it.

Mineral Policy Center does have some concerns about "good samaritan" remediation plans, which have applicability to the Corps as well. They are -

1. If the Corps attempts to reclaim a site, but actually decreases water quality, it should be held liable for the increased pollution.
2. The Corps should establish clearly defined goals for cleanup by which the success of the remediation attempt would be judged.
3. If the Corps were to fail to follow the remediation plan, the citizen suit provision of the Clean Water Act would apply to allow the public a role in enforcing compliance with the plan.

Section 3(l) of HR2753 would authorize the Secretary of the Army to "provide assistance to the Western Universities Mine-Land Reclamation and Restoration Consortium..." Mineral Policy Center is unclear as to the intention of this section. If, for example, the Consortium would actually clean-up the abandoned sites, and the Corps would provide technical assistance, we believe this relationship should be written into the bill. Mineral Policy Center would be happy to discuss with the author and other members what role universities could play in abandoned mine site restoration.

Our final concern with HR2753 is its reliance on taxpayer dollars to pay for abandoned site restoration. In some circumstances, the operators who created the water pollution problems are long gone, and a site is truly an "orphan." However, in other circumstances, large and solvent corporations may have responsibility for the mine site, and should participate in restoration efforts. As a matter of public policy, Mineral Policy Center believes that the mining industry bears some of the obligation for restoring abandoned mines, including a financial obligation. We encourage the Committee to establish a reclamation fee for all non-coal mining, or all hardrock mining. As a starting point, we suggest the committee consider HR395, the Abandoned Hardrock Mines Reclamation Act of 1999, cosponsored by Representatives Rahall and Inslee, and Miller among others. On mining on patented public lands still mined by the original purchaser, it would establish a reclamation fee proportional to profits.

As the Chair of this Subcommittee is well aware, it is the coal industry who has shouldered the costs of cleaning up sites abandoned prior to the enactment of the Surface Mining Control and Reclamation Act. In a few western states, such as Wyoming and Montana, the state has been able to reclaim most of its coal abandoned sites, and now these funds are spent on hardrock abandoned mine reclamation and other activities. It seems only fair for the hardrock industry to bear the burden for cleaning up abandoned hardrock sites, not the American taxpayer.

Mineral Policy Center looks forward to working with Representative Gibbons, other members, and committee staff to address our concerns with HR 2753. This year, we are launching a new initiative to address hardrock abandoned mine cleanup. We welcome the discussion that is taking place before the Committee today, and hope it will continue in the development and implementation of a comprehensive approach to abandoned hardrock mine reclamation.

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